

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

| | | |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Criminal Action No. |
| |) | 12-00063-01-09/10-CR-W-GAF |
| TIMOTHY L. KIRLIN, |) | |
| MATTHEW DAVIS, and |) | |
| TIMOTHY CELLA, |) | |
| |) | |
| Defendants. |) | |

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

I. BACKGROUND

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on October 9, 2013. Defendant Kirlin appeared in person and with appointed counsel Anita Burns and Laine Cardarella. Defendant Davis appeared in person and with retained counsel Pat Peters and John Osgood. Defendant Cella appeared in person and with appointed counsel Fred Duchardt. The United States of America appeared by Assistant United States Attorney Chuck Ambrose.

On March 14, 2013, a Second Superseding Indictment was returned charging Defendant Kirlin with one count of conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846; one count of being a felon in possession of an explosive device, in violation of 18 U.S.C. §§ 842(i)(1) and 844(a)(1); one count distribution of heroin causing death, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2; one count of possession with the intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); six counts of

distributing heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C); and criminal forfeiture pursuant to 21 U.S.C. § 853.

Defendant Davis was charged with one count of conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846.

Defendant Cella was charged with one count of conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846, and one count of distribution of heroin causing death, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Mr. Ambrose announced that he will be the trial counsel for the government; Mr. Ambrose will be assisted by Special Assistant United States Attorney Patrick Edwards. The case agent to be seated at counsel table is Detective James Svoboda, Kansas City, Missouri Police Department.

Ms. Cardarella announced that she and Ms. Burns will be the trial counsel for Defendant Kirlin.¹

Mr. Osgood announced that he, Pat Peters and Shelley Peters will be the trial counsel for Defendant Davis.

Mr. Duchardt announced that he will be the trial counsel for Defendant Cella.

III. OUTSTANDING MOTIONS

The following motions are currently pending:

- Defendant Kirlin's motion in limine regarding evidence that Defendant Kirlin was physically abusive to Erika Crofoot (Doc. No. 213);

¹ On October 10, 2013, Defendant Kirlin elected to proceed pro se. Laine Cardarella and Anita Burns will remain in the case as stand-by counsel.

- Defendant Kirlin's motion in limine regarding Defendant Kirlin's alleged discussion of the death of a MMA fighter with Abram Englehart and Frances Gershon (Doc. No. 238); and
- Defendant Cella's Motion for Instructions Regarding Causation Issue (Doc. No. 314).

IV. TRIAL WITNESSES

Mr. Ambrose announced that the government intends to call seventy-five witnesses without stipulations or sixty-five witnesses with stipulations during the trial.

Ms. Cardarella announced that Defendant Kirlin intends to call ten witnesses during the trial. Defendant Kirlin may testify.

Mr. Osgood announced that Defendant Davis intends to call ten witnesses during the trial. Defendant Davis may testify.

Mr. Duchardt announced that Defendant Cella intends to call twenty witnesses during the trial. Defendant Cella may testify.

V. TRIAL EXHIBITS

Mr. Ambrose announced that the government will offer approximately three hundred exhibits in evidence during the trial.

Ms. Cardarella announced that Defendant Kirlin will offer approximately fifty exhibits in evidence during the trial.

Mr. Osgood announced that Defendant Davis will offer between thirty and forty exhibits in evidence during the trial.

Mr. Duchardt announced that Defendant Cella will offer approximately six exhibits in evidence during the trial.

VI. DEFENSES

Ms. Cardarella announced that Defendant Kirlin will rely on the defense of general denial.

Mr. Osgood announced that Defendant Davis will rely on the defense of general denial.

Mr. Duchardt announced that Defendant Cella will rely on the defense of general denial.

VII. POSSIBLE DISPOSITION

Ms. Cardarella stated this case is definitely for trial.

Mr. Osgood stated this case is definitely for trial.

Mr. Duchardt stated this case is probably not for trial.

VIII. STIPULATIONS

Stipulations are not likely.

IX. TRIAL TIME

Counsel were in agreement that this case will take three to three and a half weeks to try.

X. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS

The U. S. Magistrate Judge ordered:

That counsel for each party file and serve a list of exhibits he or she intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by Wednesday, October 9, 2013;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, October 16, 2013;

That counsel for each party file and serve, in accordance with the

requirements of Local Rule 51.1, requested jury instructions² by or before noon, Wednesday, October 16, 2013. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

XI. UNUSUAL QUESTIONS OF LAW

Motions in limine on concerning cocaine will likely be filed. The Government stated it plans to dismiss Count Three due to a case currently pending before the United States Supreme Court involving the burden required to prove that distribution of a drug resulted in death. The Government plans to seek a Third Superseding Indictment next week to include the distribution of cocaine. Mr. Osgood stated Defendant Davis will request a continuance if a superseding indictment is returned.

XII. TRIAL SETTING

All counsel and the defendants were informed that this case will be tried on November 4, 2013. Defense counsel will be asking for separate counsel tables because their defenses are not compatible.

/s/ Robert E. Larsen

ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
October 9, 2013

cc: Mr. Kevin Lyon

²Counsel in all cases assigned to be tried before Chief Judge Fernando Gaitan, Jr., as reflected in the trial letter, shall meet and prepare a packet of agreed proposed jury instructions to be submitted to Judge Gaitan and e-mailed to marylynn_shawver@mow.uscourts.gov and rhonda_enss@mow.uscourts.gov by October 18, 2013. To the extent there are disagreements to certain instructions, each attorney shall tab and submit his or her preference on those instructions. The instructions shall be listed in the order they are to be given.